

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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DEC 21 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )

AUDIO A. MATOS )

LLOYD SANTIAGO-SANTOS and )  
LOURDES RODRIGUEZ BONET )

For Construction Permit for )  
a new FM Station on Channel )  
293A in Culebra, Puerto Rico )

MM Docket No. 93-89 )

File No: BPH-911114MS )

File No. BPH-911115MP )

To: The Review Board

REPLY TO CONTINGENT EXCEPTIONS

OF AURIO A. MATOS

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REPLY TO  
CONTINGENT EXCEPTIONS OF  
AURIO A. MATOS

Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ("Santos and Bonet"), as provided for in §1.277(c) of the Commission's Rules, submits this their Reply to the Contingent Exceptions ("Exceptions") of Aurio A. Matos ("Matos") to Initial Decision in the above referenced matter on December 3, 1993.

In support hereof, the following is shown:

I. Introduction

1. In his Exceptions, Matos sought review and reversal of the ALJ's interlocutory orders denying his petitions to enlarge issues against Santos and Bonet and excepted to the rulings in Order, 93M-539 and Memorandum Opinion and Order, 93M-673. Santos and Bonet submit that, in addition to being defective pursuant to §1.276(a)(2) of the Rules, there is no

basis in in fact or in law to support the Exceptions.<sup>1/</sup>

**II. The July 12, 1993  
Petition to Enlarge Issues**

2. In his July 12, 1993 Petition, Matos sought the addition of financial qualification/certification issues against Santos and Bonet. In their Opposition ("Opp I"), Santos and Bonet showed that the Matos' Petition was untimely filed since Santos and Bonet submitted their initial documents, which included the financial statements of those providing loans, to Matos on May 3, 1993. Matos did not request any supplemental documents and thus, he should have raised his financial issue at least within 15 days of May 3, 1993, the date of the standard document production. Instead, Matos filed his Petition to Enlarge Issues on July 12, 1993. Thus, the Petition was some 60 days late. (Opp. at ¶1). In his Order, 93M-539, released August 20, 1993, the Judge, incorporating the reasons for denying the Petition to Enlarge Issues ruling at the Admissions session on August 18, 1993, also questioned the timeliness of the Petition. (Tr. Vol. 2, p.26).

3. Santos and Bonet demonstrated that they had the

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<sup>1/</sup> Although §1.277 of the Rules requires that a party filing a brief in support of the initial decision follow the requirements of §1.276(a)(2), Matos did not conform his pleading to those rules, for example, he failed to include a table of contents or a table of citations.

supporting documentation available at the time they filed their application. They had the financial statements of those parties which would lend them the funds. They had estimates of costs of construction and equipment. All these documents were provided in the standard document production produced on May 3, 1993. Matos did not identify a single document required to support certification of financial qualifications which Santos and Bonet did not have in place. (Opp I at ¶¶3,4).

4. Santos and Bonet have estimated the cost of construction and operation to be \$125,000.00. The funds to meet this estimate are to come from loans from family members (\$60,000.00) and from the applicant's own resources (\$65,000.00). The challenge was aimed only at the applicant's \$65,000.00 commitment and the requested issue was "whether Santos and Bonet are financially qualified", which speaks to the current financial qualifications of the applicant. (Opp I at ¶6).

5. Thus, the focus was on the present ability of Santos and Bonet to provide \$65,000.00 against a \$125,000.00 construction and operation estimate. The 1991 Financial Statement accurately represents the current financial condition of Santos and Bonet. The Financial Statement shows \$35,000.00 on deposit. In Exhibit 1 to their Opposition, Santos and Bonet verified the \$30,000.00 line of credit (which is referenced as due from El Periodico on the

Financial Statement). Thus, Santos and Bonet currently have available the funds to meet their \$65,000.00 commitment. (Opp I at ¶7). These funds are reserved for this particular purpose and are liquid. Pursuant to instructions in FCC Form 301, if applicants have current and liquid assets sufficient to meet the proposed commitment (in this case, \$65,000.00), they are not required to show how non-liquid assets will be used to provide the funds. Accordingly, appraisal information in connection with their house and stocks is irrelevant since Santos and Bonet have ready access to sufficient liquid assets to cover their commitment.

6. Section 1.229(d) of the Rules states that a petition must contain specific allegations of fact, supported by affidavits of a person or persons having personal knowledge thereof, sufficient to support the action requested. Having presented no such evidence, the requested issue was rejected since the Commission will not specify a financial issue merely on the basis of a petitioner's skepticism or surmise about a source of funds. F.E.M. Ray, Inc., 6 FCC Rcd. 4238 (Rev. Bd. 1991), aff'd in pertinent part, 7 FCC Rcd. 848 (¶5)(1992), recon. den., 7 FCC Rcd. 4606 (1992).

7. Denying this Petition, the Judge stated that the arguments failed to raise material questions of fact with respect to the financial qualifications of Santos and Bonet

or the truthfulness of their representations at the time they filed their application. The Judge also stated that Matos had not raised doubts in the Judge's mind concerning the sufficiency of currently available funds to meet the cost of the Santos and Bonet proposal. (Tr. Vol. 2, p. 26).

### **III. The August 9, 1993 Petition to Enlarge Issues**

7. In his August 9, 1993 Petition, Matos sought the addition of public file, Section 1.65, local publication and misrepresentation issues against Santos and Bonet. Although Matos claimed that the location of the public file was only discovered at the depositions of Santos and Bonet on June 24, 1993, reasonable diligence on the part of Matos could have verified information concerning the status of the Santos and Bonet public file months before the August 9, 1993 Motion to Enlarge. The publication with respect to the hearing appeared in El Vocero de Puerto Rico on May 12, 13, 19 and 20, 1993. It identified the then location of the public file. The publication of the notice of filing of the application appeared in El Nuevo Dia Domingo on December 11, 15, 17 and 19, 1991. It also identified the then location of the public file. Thus, with minimal effort Matos could have ascertained the location of the public file as early as December 11, 1991. Yet Matos waited some 18 months, until the eve of the proposed hearing to bring this matter to the attention of the Commission. The failure to bring this



issue forward in a timely manner when measured against the lack of decisional significance of the proposed issue, even assuming the allegations to be true, justified the Judge's refusal to add the issue. See Jimmie H. Howell, 46 FCC 2d 1150, 1155 (Rev. Bd. 1974). (Opp II at ¶4).

8. Further, Santos and Bonet demonstrated that there was no basis for a §1.65 or misrepresentation issue since the facts do not support the wishful thinking of Matos. The FCC Form 301 does not require the identification of the public file location in the application itself. Therefore, since there is nothing listed or reported in the application, there can be no requirement under §1.65 to amend, if there is a change in the public file location. Tung Broadcasting Co., 23 RR 2d 1185 (Rev. Bd. 1972). (Opp II at ¶7).

9. The statements made by Lourdes Rodriguez Bonet and Lloyd Santiago-Santos in the depositions do not rise to a deliberate misrepresentation. (Deposition Tr. pp. 19-20 and 30 attached hereto as Exhibit 1). See CBS, Inc., 49 F.C.C. 2d 1214, 1223 (1974) which stands for the proposition that the intent to deceive is the sine qua non of a misrepresentation issue. Santos sent the application to Culebra on June 23, 1993 to be picked up by Joseph G.A. Fournier and delivered to the City Hall. Santos confirmed that the package had been delivered by Mr. Fournier. (Opp II, Exh.A). Mr. Fournier confirmed (Opp II, Exh.B) that he had picked the application up on June 23, 1993 and delivered

it to City Hall. (Opp II at ¶9). It is obvious that the application was misplaced at City Hall, but Santos and Bonet were unaware of this fact on June 23, 1993. There is no reason or basis to attribute an intent to deceive to Santos and Bonet on this factual scenario.

#### IV. Conclusion

10. Accordingly, Santos and Bonet respectfully submit that the ALJ did not err in refusing to designate the issues Matos requested be specified in his June 12, 1993 and August 9, 1993 Petitions to Enlarge Issues. Santos and Bonet, therefore, request that the Review Board affirm the Judge's interlocutory orders (93M-538 and 93M-673, supra).

Respectfully submitted,

**LLOYD SANTIAGO-SANTOS And  
LOURDES RODRIGUEZ BONET**

By: 

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(202) 887-1400  
Date: December 21, 1993

1 is a document from the Federal Aviation Administration in  
2 Atlanta, addressed to your husband and yourself?

3 A Uhum, yes.

4 Q It indicates the receipt of the your notice of  
5 proposed construction authorization dated November 1991.  
6 Have you received any subsequent communication from the FAA?

7 A I don't think so; I don't recall having received  
8 anything else.

9 Q Could you please take a moment to review that  
10 paragraph that begins "Your proposal has been assigned  
11 aeronautical study number"?

12 A Uhum.

13 Q You don't recall having any other communication  
14 with the FAA about this aeronautical study that's referred  
15 to in that paragraph?

16 A No, I don't recall.

17 Q Do you know whether your husband has?

18 A I don't know.

19 Q Ms. Rodriguez, your application has a public file;  
20 isn't that correct?

21 A Yes, it does.

22 Q Who is responsible for establishment and  
23 maintaining the file?

24 A Myself, the general manager, the proposed general  
25 manager.

1 Q Where is the public file located?

2 A We have one at Marina Bahia, Cataño, and we have  
3 one at Culebra.

4 Q Where in Culebra is your file located?

5 A City Hall, Culebra, Puerto Rico.

6 Q The "alcaldía"?

7 A Yes.

8 Q When was the file at the "alcaldía" established?

9 A Yesterday.

10 Q And by "yesterday" you mean June 23, 1993?

11 A That is correct.

12 Q I'd like to turn you to a handwritten document, a  
13 three page document entitled Contrato de Arrendamiento?

14 A Uhum.

15 Q Do you recognize whose writing this is?

16 A It must be my husband's or --, it must be my  
17 husband's.

18 MR. HILL: Counsel, just for clarification,  
19 do you mean the writing that constitutes the text  
20 of this document and the signatures?

21 MR. GAVIN: That's correct.

22 EXAMINATION CONTINUED

23 BY MR. GAVIN:

24 Q Whose writing constitutes the text of that  
25 document?

1 Q Mr. Santiago, there is a public file for your  
2 application, is there not? A public inspections file?

3 A Yes.

4 Q Is it not correct that until yesterday, the only  
5 copy of that file was located in Cataño?

6 A Yes, sir.

7 Q Would you please turn to a document entitled  
8 Contrato de Arrendamiento?

9 A Yes, sir.

10 Q My copy is not very legible, so I'm going to ask  
11 you; do you know who wrote this out?

12 A Yes, sir.

13 Q Who wrote it out?

14 A I am.

15 Q You did?

16 A Yes, sir.

17 Q My copy is not very legible, so I'm going to ask  
18 you to read this slowly so that I can make notations as we  
19 go, please?

20 A Yes, sir. The heading is "Contrato de  
21 Arrendamiento. De una parte, Don Joseph G. A. Fournier,  
22 soltero, vecino de Culebra, mayor de edad, con el número de  
23 Seguro Social 016-30-8279, con capacidad legal suficiente  
24 que probará en cualquier momento, de ser requerido. De la  
25 otra parte, Don Lloyd M. Santiago, vecino de Cataño, casado,

**CERTIFICATE OF SERVICE**

I, Joyce Mills, do hereby certify that on this 21st day of December, 1993, the foregoing **REPLY TO CONTINGENT EXCEPTIONS TO INITIAL DECISION OF AURIO A. MATOS** was served to the following persons by First Class Mail:

\* Honorable Joseph A. Marino, Chairman  
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